

Central Intelligence Agency

DD/A Registry

85-0641

Washington, D.C. 20505

26 FEB 1985

The Honorable George Bush
President of the Senate
Washington, D.C. 20510

96-3

Dear Mr. President:

Submitted herewith, pursuant to the provisions of 5 U.S.C. 552(d), is the report of the Central Intelligence Agency concerning its administration of the Freedom of Information Act (FOIA) during calendar year 1984.

During 1984, 2,800 requests for information were logged and put into processing by the Agency, of which 1,519 were handled under the Freedom of Information Act. Several hundred additional request letters were received during the year but not formally processed pending receipt of additional information from the requesters. These incomplete requests were, with but one or two exceptions, requests for access to personal records, which, under the Agency's regulations, are usually processed under the provisions of the Privacy Act of 1974 (5 U.S.C. 522a) rather than the Freedom of Information Act. Production/workload statistics for CY 1984 are enclosed at Tab A.

During CY 1984 the number of requests for information increased by 334 over 1983. Despite the heavy demand to focus our resources on world intelligence problems, we were still able to devote the equivalent of 114 full-time employees to the effort. The dollar cost for personnel alone to sustain this effort amounted to over \$3.29 million. Of this total, \$1.97 million was devoted to FOIA. We have not factored in the cost of space and equipment needed to support our FOIA/PA activities, although we incurred substantial equipment costs in an effort to achieve greater efficiency in processing information requests. For example, during 1984 we purchased eight additional word processors and associated hardware for use by our case officers in composing correspondence to requesters. A significant improvement in the flow of correspondence was evident by the year's third quarter. We were, in fact, able to cope with a 14% increase in requests with no additional personnel and at the same time reduce our backlog by 191 cases. In December of 1984 we brought on board three retired annuitants as part-time contractors to work some of the larger cases that have tied up a significant amount of our staff

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The Honorable Thomas P. O'Neill
Speaker of the House of Representatives
Washington, D.C. 20515

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officers' time. These contractors are still being trained, but their help should be evident during 1985. The number of administrative appeals did increase by 28 during 1984, but we consider an increase in appeals normal as initial responses increase. At year's end our appeal workload was 143 cases, the increase representing an appeal rate less than 1 percent of our initial responses.

Even discounting our expenditure for space and equipment, which was significant during 1984, the administrative burden of the Act continues to be as heavy as in past years. Since 1975 we estimate that the Agency has spent over \$28 million in personnel costs alone for processing information requests--\$15.6 million for FOIA. The provisions of the Act that permit the Agency to charge fees for record searches and duplication are inadequate for recovering even a reasonable part of the costs. The Agency has thus far collected a total of \$89,663 in fees. When compared with expenditures for administering just the FOIA, this continues to amount to a return of slightly over one-half cent on the dollar. Because of the number of fee waivers or fee reductions granted, the Agency was able to collect only \$4,639 in fees and advance deposits during CY 1984--about half the amount collected in 1983.

With the passage of the CIA Information Act of 1984, our main concern about FOIA--namely its effect on our intelligence collection effort--should be alleviated. We believe that there will also be a beneficial result for our requesters in that manpower formerly devoted to reviewing files no longer subject to FOIA search can now be used to reduce our backlog and provide faster response on newer requests. Even though we expect our response time to improve considerably as a result, we will still be unable, as in past years, to meet the response time requirements imposed by the FOIA. The Agency is committed, however, to establishing a program designed to reduce substantially our current backlog of requests. Details concerning our efforts will be reported to Congress semiannually beginning in April. Additionally, the Agency will maintain the current budgetary and personnel allocation for processing FOIA requests for a period of two years following passage of the Act. These measures should result in a substantially reduced response time.

Sincerely,

Harry E. Fitzwater

Harry E. Fitzwater
Deputy Director
for
Administration

Enclosures

IPD/[] 20 February 1985

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Distribution:

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FREEDOM OF INFORMATION ACT
ANNUAL REPORT TO THE CONGRESS FOR THE YEAR 1984

1. Total number of initial determinations not to comply with a request for records made under subsection 552(a): 658

2. Authority relied upon for each such determination:

(a) Exemptions in 552(b):

<u>Exemption involved</u>	<u>Number of times (i.e., requests) invoked</u>
(b)(1)	540
(b)(2)	3
(b)(3)	593
(b)(4)	2
(b)(5)	7
(b)(6)	29
(b)(7)	13
(b)(8)	0
(b)(9)	0

(b) Statutes invoked pursuant to Exemption No. 3:

<u>Statutory citation</u>	<u>Number of times (i.e., requests) invoked</u>
50 U.S.C. 403 (d)(3) and/or 50 U.S.C. 403g	593

(c) Other authority: None

There were 583 other FOIA cases in which the requesters were neither given access to nor denied the records sought. None of these cases was regarded as a denial, however, inasmuch as the Agency was either prepared to act upon the request or there proved to be no records to act upon. Accordingly, they have not been included in the 658 figure provided in answer to question No. 1, above. In 148 instances, our searches uncovered no records relevant to the request. In 13 other cases, we found no CIA-originated records, but did locate in our files pertinent documents created by another agency, which were subsequently referred to the agency of origin for review and direct response to the requesters. There were 14 instances where the information requested did not fall under CIA's jurisdiction, and the requester was thus referred to the agency or agencies having cognizance over the records. In 9 cases, requesters appealed on the basis of our failure to respond within the statutory

deadline; in another 15 cases, the requesters chose not to exercise their right to administrative appeal and went directly into litigation for the same reason. In each of these instances, therefore, the initial processing of the requests progressed into the Agency's appellate or litigation channels. Fifteen requests were withdrawn by the requesters after processing had commenced, but before action on them could be completed. Finally, 369 cases were canceled by the Agency because of the failure of requesters to respond to letters asking for clarification, additional identifying information, notarized releases from third parties, fee payments, fee deposits, or written commitments that all reasonable search and/or copying fees would be paid, etc. In each of the latter cases, at least 90 days had elapsed without a reply from the requester before action was taken to discontinue processing.

3. Total number of administrative appeals from adverse initial decisions made pursuant to subsection (b)(6): 3

In nine other cases, requests which were initially processed under the provisions of the Privacy Act were processed under the Freedom of Information Act upon appeal, in accord with the wishes of the appellants. These were requests for access to personal records, which the CIA usually processes under the Privacy Act rather than the Freedom of Information Act.

(a) Number of appeals in which, upon review, request for information was granted in full: None

(b) Number of appeals in which, upon review, request for information was denied in full: 14

(c) Number of appeals in which, upon review, request was denied in part: 10

4. Authority relied upon for each such appeal determination:

(a) Exemptions in 552(b):

<u>Exemption invoked</u>	<u>Number of times (i.e., appeals) invoked</u>
(b)(1)	21
(b)(2)	0
(b)(3)	23
(b)(4)	0
(b)(5)	2
(b)(6)	6
(b)(7)	1
(b)(8)	0
(b)(9)	0

(b) Statutes invoked pursuant to Exemption No. 3:

<u>Statutory citation</u>	<u>Number of times (i.e., appeals) invoked</u>
50 U.S.C. 403(d)(3) and/or 50 U.S.C. 403g	23

5. Names and titles of those persons who, on appeal, were responsible for the denial in whole or in part of records requested and the number of instances of participation of each:

<u>Name</u>	<u>Title</u>	<u>No. of instances of participation</u>
Taylor, James H.	Former Inspector General	3
Fitzwater, Harry E.	Deputy Director for Administration	4
Gates, Robert M.	Deputy Director for Intelligence	4
Stein, John H.	Former Deputy Director for Operations	11
Stein, John H.	Inspector General	1
George, Clair E.	Deputy Director for Operations	5
Hineman, R. Evan	Deputy Director for Science and Technology	4

6. Provide a copy of each court opinion or order giving rise to a proceeding under subsection (a)(4)(F): etc.: None7. Provide an up-to-date copy of all rules or regulations issued pursuant to or in implementation of the Freedom of Information Act (5 U.S.C. 552):

Handbook submitted with the 1983 report is still valid.

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8. Provide separately a copy of the fee schedule adopted and the total dollar amount of fees collected for making records available;

See Tab B for a copy of the fee schedule.

The total amount collected and transmitted for deposit in the U.S. Treasury during 1984 was \$4,638.85.

9. A. Availability of records:

As the CIA does not promulgate materials as described in 5 U.S.C. 552(a)(2)(A)-(C), no new categories have been published.

In the case of each request made pursuant to the Freedom of Information Act, all reasonably segregable portions of records are released.

B. Costs

A total of 206,629 actual man-hours of labor was devoted during calendar year 1984 to the processing of Freedom of Information Act, Privacy Act, and mandatory classification review requests, appeals, and litigation. Taking into account leave and holidays, this would equate to approximately 114 full-time personnel. We estimate the average grade for professional employees at GS-12, and for clerical employees GS-06. The funds expended during calendar year 1984 on personnel salaries, if overtime payments are ignored, would thus amount to \$2.98 million. If fringe benefits such as retirement and hospitalization are factored in as amounting to 10 percent of the salaries, the total personnel costs come to \$3.29 million. Of this total, approximately \$1.97 million can be attributed to the Freedom of Information Act.

C. Compliance with time limitations for Agency determinations:

(I) Provide the total number of instances in which it was necessary to seek a 10-day extension of time: None

The Agency's processing backlogs have been such that in almost all instances the deadlines for responding to requests and appeals expired prior to our actually working on them. We were seldom in a position, for that reason, to assert that any of the three conditions upon which an extension must be based existed. We have, accordingly, explained the problem to requesters and appellants and apprised them of their rights under the law.

(II) Provide the total number of instances in which court appeals were taken on the basis of exhaustion of administrative procedures because the Agency was unable to comply with the request within the applicable time limits: 11

Of these, seven actions were brought under the FOIA and four were brought under both the FOIA and PA.

(III) Provide the total number of instances in which a court allowed additional time upon a showing of exceptional circumstances, together with a copy of each court opinion or order containing such an extension of time : 4

Copies of the pertinent court orders are attached at Tab C. No written order was issued by the court in May v. CIA (CA 84-0932). Additional time was granted pursuant to an oral agreement at status call.

D. Internal Memoranda:

See Tab D.